Supreme Court, U.S.
FILED
OCT 27 1979
MICHAEL RODAK, JR., CLERK

No. 79-682

In the

Supreme Court of the United States

OCTOBER TERM, 1979

NORB J. KONCZAK and LINDA KONCZAK,
Petitioners,

vs.

ARTHUR T. TYRRELL, Sheriff of McHenry County, ROBERT W. MADSEN, Captain, Sheriff's Police, McHenry County, and LES KOTTKE, Sergeant, Sheriff's Police, McHenry County,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

HARVEY MELINGER
134 North LaSalle Street
Suite 2116
Chicago, Illinois 60602
312/346-7920
Attorney for Petitioners

The Scheffer Press, Inc.—(312) 263-6850

INDEX

	PAGE
Opinion Below	1
Jurisdiction	1
Questions Presented	2
Constitutional Provisions Involved	2
Statement of the Case	3
Statement of the Facts	4
Argument	
Reasons for Granting Writ	8
Wilful Violations	11
1. Initial Arrest	11
2. Charge of Disorderly Conduct Under Ch. 38 Sec. 26-1 (a) (2) Ill. Rev. Stat.	12
3. Charge of Disorderly Conduct Under Ch. 38 Sec. 26-1 (a) (1) Ill. Rev. Stat.	13
4. Charge of Disorderly Conduct for Saying "Run into the house and get the rifle"	13
5. Charge of Possession of a Weapon without Owner's Identification Card. Ch. 38 Sec. 83-2, Ill. Rev. Stat.	14
6. False Arrest of Linda Konczak	14
7. Illegal Search and Seizure	15
8. The Petition for Hospitalization	15
Conclusion	17
Appendix A—Decision of the Court of Appeals for the 7th Circuit dated July 12, 1979	App. 1a
Appendix B—Per Curiam Order denying Petition for Rehearing dated August 20, 1979	App. 12a
Appendix C—Petition for Hospitalization	App. 13a

PAGE

Appendix D—Charge of Disorderly Conduct for Threat to Shoot a Police Officer. Ch. 38 Sec. 26-1 (a) (2) .....App. 16a

Appendix E—Charge of Disorderly Conduct for Threat to Shoot a Police Officer. Ch. 38 Sec. 26-1 (a) (1) .....App. 18a

Appendix F—Charge of Possession of Firearm without Firearm Owner's Identification Card .....App. 19a

Appendix G—Charge of Disorderly Conduct for Saying "Run into the house and get the rifle" .....App. 21a

AUTHORITIES CITED

Cases

Silver v. Cormier, (1976, 10th Cir.) 529 F. 2d 161 at 163 8

Spencer v. Staras, (1974, 7th Cir.) 507 F. 2d 554, 558 8

Morales v. Haines, (1973, 7th Cir.) 486 F. 2d 880, 882 8

Caperci v. Huntoon, (1968, 1st Cir.) 397 F. 2d 799, 801 9

Adickes v. Kress & Company, 398 U.S. 144, 233, 26 L. Ed. 2d 142, 1973, 90 S. Ct. 159 9

Screws v. United States, 18 USC 242, supra 8 9

Basista v. Weir,* 87-88, supra 9

Tracy v. Robbins, 40 FRD 108, 113 (DC SC 1966) 9

Butcher v. Krause, (1952, 7th Cir.) 200 F. 2d 576, 585 10

Lindquist v. Friedman's, (1937) 366 Ill. 232, 238, 8 N.E. 2d 625, 627 .....10, 14

PAGE

People v. Cooper, (1975) 32 Ill. App. 3d 516, 366 N.E. 2d 247, at 249 12

People v. Raby, 40 Ill. 2d 392, 240 N.E. 2d 595 at 598 (1968) 13

People v. O'Neal, 35 Ill. App. 3d 89, 341 N.E. 2d 36, 38 14

Other Authorities

First Amendment to the United States Constitution 2

Fourth Amendment to the United States Constitution 2

Fourteenth Amendment to the United States Constitution 2

28 USC 1254 (1) 2

Rule 22,3, Rules of the Supreme Court 2

42 USC 1983 3

28 USC 1343 3

Disorderly Conduct, Ch. 38 Sec. 26-1 (a) (2) Ill. Rev. Stat. 7, 12

Disorderly Conduct, Ch. 38 Sec. 26-1 (a) (1) Ill. Rev. Stat. 7, 13

Possession of Firearms without Requisite Firearms Owner's Identification Card, Ch. 38 Sec. 83-2 Ill. Rev. Stat. 7, 14

Disorderly Conduct, Ch. 38 Sec. 26-1 (a) (1) Ill. Rev. Stat. 7, 14

Petition for Hospitalization, Ch. 91½ Sec. 71 and 72 Ill. Rev. Stat. 15

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No.

NORB J. KONCZAK and LINDA KONCZAK,

Petitioners,

vs.

ARTHUR T. TYRRELL, Sheriff of McHenry County, ROBERT W. MADSEN, Captain, Sheriff's Police, McHenry County, and LES KOTTKE, Sergeant, Sheriff's Police, McHenry County,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioners, Norb J. Konczak and Linda Konczak, pray that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Seventh Circuit.

OPINION BELOW

The published opinion of the Court of Appeals is appended to this Petition as Appendix A and is cited as *Konczak* v. *Tyrrell et al,* 603 F.2d 13.

JURISDICTION

The decision of the Court of Appeals was decided on July 12, 1979. Petitioners' petition for rehearing, timely filed, was denied pursuant to per curiam order on Au-

gust 20, 1979, which order is appended hereto as Appendix B. The jurisdiction of this court is invoked pursuant to 28 U.S.C. 1254 (1) and Rule 22.3 of the Rules of this Court.

QUESTIONS PRESENTED FOR REVIEW

1. Whether wilful violations of plaintiffs' constitutional rights by the defendant police officers in a suit under 42 U.S.C. 1983 will support a jury verdict for punitive damages in the absence of abusive conduct or malice by the police officers.

2. Whether the evidence, viewed in the light most favorable to the sustenance of the jury verdict for punitive damages, supports a finding of malice by the defendant police officers.

CONSTITUTIONAL PROVISIONS INVOLVED

1. First Amendment to the United States Constitution.

   Congress shall make no law abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the government for a redress of grievances.

2. Fourth Amendment to the United States Constitution.

   The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, . . .

3. The Fourteenth Amendment to the United States Constitution.

   . . . no State shall make or enforce any law which shall abridge the privelege or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The plaintiffs, Norb J. Konczak and Linda Konczak sued the defendants, Arthur T. Tyrrell, Sheriff of McHenry County, Illinois, Robert W. Madsen, Captain of the Sheriff's Police of McHenry County, Illinois, and Les Kottke, Sergeant of Sheriff's Police of McHenry County, Illinois in the U.S. District Court for the Northern District of Illinois, Eastern Division, for violation of their civil rights under 42 U.S.C. 1983. Jurisdiction of the District Court was invoked under 28 U.S.C. 1343.

The trial was by jury. The jury found the issues in favor of the plaintiffs and entered a verdict for Norb J. Konczak and against the defendants for compensatory damages in the sum of $10,000.00 and punitive damages in the sum of $21,000.00 and a verdict for Linda Konczak and against the defendants for compensatory damages of $2,500.00 and punitive daamges in the sum of $2,500.00 Judgment was entered on the verdict. On defendants' motion, the District Court entered judgment N.O.V. in favor of defendants with regard punitive damages, but let the judgment for compensatory damages stand. Plaintiffs appealed to the United States Court of Appeals for the Seventh Circuit contesting the judgment N.O.V. on punitive damages and the defendants cross appealed the judgment for compensatory damages. The Court of Appeals affirmed the District Court in all respects.

STATEMENT OF FACTS

Mr. Konczak wrote a letter to his Congressman, Robert McClory complaining of mistreatment by the McHenry County Sheriff's Police with regard to his complaints against his former wife. (Tr 33, 35) In response to that letter, on March 25, 1976, an assistant to the Congressman, a Michael McCarry called Mr. Konczak on the phone from Washington D.C. to discuss his complaints. (Tr. 34, 36, 274) McCarry advised that it was a civil matter and the Congressman could be of no assistance. (Tr 38) Mr. Konczak testified that he told McCarry that the police broke his door down on a prior occasion when he was not at home and if they ever break his door down again when Mr. Konczak is home and the police have no warrant or right to be in the home, Mr. Konczak will shoot them if he has to. (Tr 40) McCarry testified that he told Mr. Konczak to get an attorney and Konczak replied "that there was no way he could get justice in McHenry County, that no lawyer would take his case." (Tr 280) and Konczak further said:

> Yes, he became more angry, also he became more profane and eventually said: The only way he felt he could get his case in court was to go out and shoot a McHenry policeman. At that point, he asked me my name again and told me he would invite me to his execution in the gas chamber. (Tr 281)

McCarry then relayed this conversation to the McHenry police and further stated that Mr. Konczak threatened to shoot a police officer. Sheriff Tyrrell then ordered Mr. Konczak arrested for making threats. (Tr 421) Pursuant to that order Sergeant Kottke and a deputy Sweeney placed Mr. Konczak under arrest in the yard of his

home for assaulting a police officer on March 25, 1976 at about 2:10 p.m. (Tr 42)

After being placed under arrest in his yard, Mr. Konczak noticed someone in a suit going toward his back door and he then told his wife who was also in the yard "that somebody was coming to the back door and to go in the house." (Tr 44, 229) Mrs. Konczak started to go toward the front porch but "Les Kottke grabbed her by the right arm and stopped her from going up there". (Tr. 44) Mr. Konczak was then transported by Deputy Sweeney to the police station.

Sergeant Kottke told Mrs. Konczak that she could only go into the house if he, Kottke, accompained her into the house. (R 231) Mrs. Konczak remained outside the home for 1½ to 2 hours. The three youngest children, aged 2, 5 and 5 were in the home alone. (Tr 232) She periodically would ask if she could go in the home but they wouldn't let her. (Tr 232) Then Captain Madsen arrived at the home and Mrs. Konczak asked him why she couldn't go in the house and Madsen replied: "Well I'm not keeping you from going in. You could go in any time you want provided you let one of us go in. (TR 233) Madsen said he wanted to search the house for firearms or any other weapon he could find. (Tr 234)

> Mrs. Konczak testified:
> I finally gave in and signed a consent that Captain Madsen had because my two year old came to the window all full of red glaze all over her face, and Lenora had to go to the bathroom and she couldn't hold it anymore, so I finally signed. (Tr 235)

The consent form was signed about 30 to 45 minutes after Captain Madsen arrived at the home. Mrs. Konczak "was pretty broken up". (Tr 267)

Captain Madsen then went into the home with Mrs. Konczak and went to her brother's bedroom and took a gun out of her brother's dresser drawer. (Tr. 235) The gun was owned by Larry Gibson, the brother of Mrs. Konczak who lived with the Konczak family. Mr. Gibson had a firearm owner's identification card at that time. (Tr 236, 52) At no time was either Norb Konczak or Linda Konczak asked if they had firearm owner's identification card in their possession. (Tr 51, 53, 236) Mrs. Konczak had a firearm owner's identification card in her possession at that time. (Tr 236) Mr. Konczak never had a gun or ammunition in his possession while observed by the police. (Tr 51) The police did not run a computer check to determine if a firearm owner's identification card had previously been issued to Mr. Konczak. (Tr 407, 408)

While plaintiff was at the police station, a petition for hospitalization of Mr. Konczak was prepared and signed by Deputy Sweeney. (Appendix C) (Tr 56) Plaintiff was not examined by a doctor prior to the signing of the petition and no certificate of a doctor was attached to the said petition (Tr 56, 57) although there were doctors readily available to examine Mr. Konczak. (Tr 475) According to Sergeant Kottke, it would not be proper procedure in the Sheriff's department for Deputy Sweeney to sign the petition without orders from a superior officer. (Tr. 406) Pursuant to the said petition, plaintiff was transported to the Elgin State Mental Hospital between 6:00 to 8:00 p.m. on March 25, 1976, where he was examined by Dr. Tubel and found to be *not* in need of mental treatment. (Tr 61, 72) Plaintiff remained in the hospital until 2:30 a.m. on March 26, 1976 when he was transported back to the McHenry County lockup where he remained until released on bail in the morning of March 26, 1976.

As a result of this incident, Mr. Konczak was charged with three crimes. First, with disorderly conduct for saying that he was going to shoot a police officer in violation of Ill. Rev. Stat. Ch. 38 Section 26-1 (a) (2). (Appendix D) This charge was amended on June 30, 1976 to disorderly conduct under Ill. Rev. Stat. Ch. 38 Section 26-1 (a) (1). (Appendix E) This charge was made at the direction of Sergeant Kottke. (Tr. 410) Second, with possession of a firearm without requisite firearm owner's identification card; Ill. Rev. Stat. Ch. 38 Section 83-2 (Appendix F) This charge was signed by Deputy Sweeney at the direction of Sergeant Kottke. (Tr 405) Third, on July 28, 1976, Sergeant Kottke charged plaintiff with disorderly conduct for saying "run into the house and get the rifle" in violation of Ill. Rev. Stat. Ch. 38 Section 26-1 (a) (1). (Appendix G)

The first charge was dismissed by the State Court on Mr. Konczak's motion to strike. The second and third charges went to trial before a jury and Mr. Konczak was found not guilty on both charges.

ARGUMENT

REASONS FOR GRANTING THE WRIT

The Court of Appeals affirmed the judgment N.O.V. for punitive damages because viewing the evidence in the light most favorable to the plaintiffs "there is simply no evidence of aggravating circumstances or of the defendants acting with malicious intent upon which the jury could award punitive damages." (Pg 8) The Court bases its conclusion of lack of aggravating circumstances on the claim that Mr. Konczak was allowed to borrow a cigarette from his brother-in-law, Mrs. Konczak was allowed to speak to her children through a window and that there was no abusive conduct by the police officers. (Pg. 8, 9) Although the Court of Appeals quoted the District Court's finding that there was no wilful and wanton misconduct, by any of the Defendants, that finding has not been adopted in the conclusions of the Court of Appeals. (Pg. 8) The Court of Appeals is therefore equating the requirement of aggravating circumstances with abusive conduct or police brutality. However, the aggravating circumstances which will support an award of punitive damages include a "reckless indifference to the property rights of others, ill will, a desire to injure or malice." *Silver* v. *Cormier,* (1976, 10th Cir) 529 F2d 161 at 163. In support of that proposition the *Silver* court cites *Spence v. Staras,* (7th Cir, 1974) 507 F 2d 554, 558 and *Morales* v. *Haines,* (7th Cir, 1973) 486 F 2d 880, 882 being the same decisions relied upon by the Court of Appeals in the instant case of requiring "certain aggravating circumstances." However, there is nothing in those decisions indicating that the aggravating circumstances are limited to abusive conduct or brutality. In fact, both of said cases, which held that punitive damages may

be awarded, involved claims of failure of officials to take action[1] rather than any affirmative misconduct. The requirement of abusive conduct for punitive damages was expressly rejected in *Caperci* v. *Huntoon* (1968, 1st Cir) 397 F 2d 799, 801 involving an illegal search and seizure wherein the court said that "the female plaintiff's concession that defendants 'acted like gentlemen' did not mean that their conduct was not an outrageous invasion of plaintiff's privacy without color or right and for an improper motive. The court instructed the jury with care. There was no error."

Although petitioners could find no United States Supreme Court decision defining the requirements for punitive damages in a Sec. 1983 case, the requirements were set forth in the concurring and dissenting decision of Justice Brennan in *Adickes* v. *Kress & Company* 398 U.S. 144, 233 26 L Ed 2d 142, 197, 90 S Ct. 159 as follows:

> To recover punitive damages, I believe a Plaintiff must show more than a bare violation of 1983. On the other hand, he need not show that the Defendant specifically intended to deprive him of a recognized federal right, as is required by the word "wilfully" in 18 USC 242, see *Screws* v. *United States, supra.* Nor need he show actual damages. *Basista* v. *Weir,* supra at 87-88; *Tracy* v. *Robbins,* 40 FRD 108, 113 (DC SC 1966). It is sufficient for the Plaintiff to show either that the Defendant acted "under color of (a) statute, ordinance, regulation, custom, or usage of any State or Territory," with actual knowledge that he was violating a right "secured by the Constitution and laws," or that the Defendant acted with reckless disregard of whether he was thus violating such a right.

---

[1] *Spence* v. *Staras* involving hospital officials failure to protect inmate from beatings by other inmates.
Morales v. *Haines* involving failure of the mayor to allow construction of HUD 235 homes.

Indeed, the decision of the Court of Appeals in this case requiring abusive conduct by the police officers to support a verdict of punitive damages is the only case which so holds, including both Federal decisions and Illinois cases (based on petitioners research). The Illinois law was set forth in *Butcher* v. *Krause* (7th Cir. 1952) 200 F 2d 576, 585 as follows:

> In Illinois punitive damages may be awarded when a wrongful act is performed with reckless disregard for the rights of others. *Lindquist* v. *Friedman's Inc.*, (1937) 366 Ill 232, 238, 8 N.E. 2d 625.

Therefore, the instant decision constitutes a departure from all the known law on the subject of punitive damages. It has the pernicious effect of outlawing punitive damages in all cases absent abusive conduct and malice no matter how flagrant and wilful the violations may be thereby vitiating the purpose of punitive damages, being the deterrence of the defendants and others from performing similar acts. The instant case is a singular example of the need for punitive damages to deter these defendants and others from similar acts since they professed, throughout the trial, that their acts were justified. (See argument below) To correct the mis-statement of the law in the instant case and to prevent this case from being used as a precedent for incorrect law, petitioners request the granting of this writ.

Although malice is not a requirement for punitive damages where there are wilful violations of plaintiff's constitutional rights, the plaintiffs contend that there is ample evidence of malice in this case, as argued below, and the finding of the Court of Appeals to the contrary is incorrect.

THE WILFUL VIOLATIONS

1. THE INITIAL ARREST

Plaintiff was arrested because of a conversation with his Congressman's office complaining of mistreatment by the Sheriff's police. The Sheriff claims that he was informed that Mr. Konczak threatened to kill a police officer, although both Mr. Konczak and Michael McCarry testified that that was not the conversation. But, even if the Sheriff was informed that a threat was made, what is the justification for the arrest? A police officer can only arrest a person if he has probable cause to believe that the person has committed or is committing an offense. What offense did Sheriff Terrell believe the plaintiff had committed? *None*. The Sheriff did not order the arrest for disorderly conduct and did not know that charge was brought against the plaintiff. (Tr 426) The Sheriff testified that he made the arrest because he felt that the plaintiff was capable of carrying out such a threat. (Tr 443) He further stated that when such a threat is made, he, the Sheriff, will make a subjective evaluation of the individual in deciding whether to make an arrest and in some cases he will make the arrest and in other cases he will not make the arrest. (Tr 424) He insisted that this method of making arrests is correct. (Tr 424) But, of course, arrests cannot be made because a police officer believes a person is capable of committing a crime, but only if a crime has been committed or is being committed. The Sheriff knew that no crime had been committed, yet he ordered the arrest and that is a wilful violation of plaintiff's due process rights and first amendment rights.

MALICE

The arrest was made by the Sheriff because Mr. Konczak had a conversation with his Congressman's office com-

plaining of mistreatment by the Sheriff. Reasonable men could find, and the jury did find, that the Sheriff's action was taken, in whole or in part, because of the complaints made by the plaintiff against the Sheriff. Considering the fact that there was no evidence of the plaintiff having been convicted of any crime, the Sheriff's claim that the reason for the arrest was that he considered Mr. Konczak capable of performing the threat rings false.

2. THE CHARGE OF DISORDERLY CONDUCT UNDER CH. 38 SEC. 26-1 (a) (2) OF ILL. REV. STAT.

That statute provides that:

(a) A person commits disorderly conduct when he knowingly:

(2) With intent to annoy another, makes a telephone call, whether or not conversation thereby ensues;

The defendants knew that plaintiff did not violate that statute because defendants knew that the call was made by Michael McCarry to Mr. Konczak (Tr 444). Defendants also knew that the conversation was to discuss plaintiff's complaints and not for the purpose of annoying another. The fact that the conversation later became heated and both parties may have become upset is irrelevant to the statute. *People* v. *Cooper* (1975) 32 Ill App 3d 516, 336 N.E. 2d 247, at 249. Sergeant Kottke, knowing that plaintiff did not violate this statute ordered that plaintiff be charged with this violation. That is a wilful violation of plaintiff's rights.

MALICE

See argument concerning malice above.

3. THE CHARGE OF DISORDERLY CONDUCT UNDER CH. 38 SEC. 26-1 (a) (1) ILL. REV. STAT.

That statute provides:

(a) A person commits disorderly conduct when he knowingly:

(1) Does any act in such an unreasnable manner as to alarm or disturb another and to provoke a breach of the peace.

Defendants knew that plaintiff did not violate this statute because a long distance phone conversation between two persons, with no other listeners to the conversation, cannot conceivably provoke a breach of the peace. *People* v. *Raby,* 40 Ill 2d 392, 240 N.E. 2d 595 at 598 (1968). Sergeant Kottke's ordering this charge was a wilful violation of plaintiffs due process rights and first amendment rights.

MALICE

See argument concerning malice above.

4. THE CHARGE OF DISORDERLY CONDUCT FOR SAYING "RUN INTO THE HOUSE AND GET THE RIFLE" CH. 38 SEC. 26-1 (a) (1)

Plaintiff never did say "run into the house and get the rifle". He said "that somebody was coming to the back door and to go in the house". (Tr 44, 229) Of course, there is no violation in telling your wife to go in the house when you observe someone trying to enter your house without authority. Therefore, Sergeant Kottke lied and changed the words spoken by plaintiff in an attempt to frame him for a non-existent act. Nothing could be more

wilful and malicious. The malice is further proven by the fact that in the criminal trial in the State Court for this charge, Sergeant Kottke testified that Mr. Konczak said "Go in the house and get the rifle and shoot them" (Crim. Tr 386) although in the trial in the District Court Sergeant Kottke admitted that Mr. Konczak did not speak those words. (Tr 417)

5. THE CHARGE FOR POSSESSION OF A WEAPON WITHOUT OWNERS IDENTIFICATION CARD. CH. 38 SEC. 83-2, ILL. REV. STAT.

Defendants knew that Mr. Konczak never had actual or constructive possession of the weapon as is required by this statute. *People* v. *O'Neal* 35 Ill. App. 3d 89, 341 N.E. 2d 36, 38. Plaintiff was arrested in the yard and the gun was in the home. At the time the gun was confiscated by the police, Mr. Konczak was in the lock up, far away. Sergeant Kottke wilfully ordered that this charge be brought against plaintiff.

MALICE

Malice is proven since neither Sergeant Kottke or any other police officer asked plaintiff if he had a firearm owner's identification card nor did they run a computer check to see if such a card was issued to Mr. Konczak. The only conclusion is that they wished to prosecute Mr. Konczak for an evil motivation without regard to whether a crime was committed.

6. THE FALSE ARREST OF LINDA KONCZAK

Sergeant Kottke grabbed Linda by the arm and restrained her in the yard and prevented her from going into her home for 1½ to 2 hours. That is an arrest. *Linquist* v. *Friedman's, Inc.* (1937) 366 Ill. 232, 8 N.E. 2d 625, 627. Yet, the defendants do not claim that Mrs. Konczak committed any crime. That was a wilful violation of her right to be free from an arrest without authority under the law.

MALICE

They arrested her in order to make an illegal entry into the home and an illegal seizure of property within the home. That is an evil motivation.

7. THE ILLEGAL SEARCH AND SEIZURE

Sergeant Kottke and Captain Madsen forced Mrs. Konczak to sign a consent to search form and Captain Madsen then made an illegal search of the home and an illegal seizure of the weapon. Captain Madsen knew that Mrs. Konczak did not commit any crime and he did not have a search warrant. He knew he had no right to enter the home but tried to subvert the law and plaintiff's rights by forcing Mrs. Konczak to allow him to enter the home. That is a wilful violation of their fourth amendment rights.

MALICE

The purpose of the illegal entry was to confiscate the private property of plaintiffs'. That is an evil motivation.

8. THE PETITION FOR HOSPITALIZATION

Ch. 91½ Sec. 7-1 and 7-2 of Ill. Rev. Stat. provide that such a petition must be accompanied by the certificate of a physician unless a physician is not immediately available. However, physicians were available at the time. (Tr. 475) Although the petition was signed by Deputy Sweeney, Sergeant Kottke testified that it was not proper procedure for the Deputy to sign the petition without authority from his superiors and the jury could assume the defendants herein authorized the petition. The defendants wilfully

disregarded the requirement of a doctors examination thereby violating plaintiff's due process rights.

MALICE

This particular violation is the most compelling proof of malice. The defendants were not satisfied with charging plaintiff with various crimes because plaintiff could then get out on bond. Defendants wanted plaintiff put away permanently without a trial and without a doctor's examination. This is very reminiscent of proceedings we read about in countries that do not enjoy our constitutional rights.

It shocks this writer's conscience to read in the Court of Appeals that in spite of all the grievious wilful violations enumerated above, punitive damages are not warranted because plaintiff was allowed to get a cigarette. The ironic thing is that the defendants did not allow plaintiff to get a cigarette. Both Sergeant Kottke and Deputy Sweeney ran after Mrs. Konczak as she started toward the house leaving Mr. Konczak unattended. It was then that he, on his own, walked over to his brother-in-law and got a cigarette. (Tr 44) Also, Mrs. Konczak was not able to keep her children by the window as evidenced by the fact that her two year old got a lead based glaze on her face. Preventing a mother from attending to her small children for two hours where they are in danger of eating lead is an aggravating circumstance. It would have been much more humane for the police to have broken down the door and entered, rather than resort to the cruel hypocritical charade of forcing Mrs. Konczak to sign a consent form by keeping her from her children.

The Sheriff testified that everything he did was correct and implied that he wil continue to so act. The jury, by

its verdict told the Sheriff and the other defendants that they did wrong and assessed punitive damages to tell them not to do it again. Is it right that this salutory lesson should be nullified by the District Court and the Court of Appeals?

CONCLUSION

The purpose of the Civil Rights Act, Section 1983, is to protect our federal and constitutional rights by establishing a remedy for the violation of those rights. Without a remedy, our constitutional rights would be but empty words. Since the actual damages in such cases are very often small, punitive damages are necessary to encourage such suits as well as for the deterrence of similar acts. If a plaintiff is limited to actual damages in a false arrest case, with minimal special damages, the amount of the potential recovery would be too small to make such suits feasible or to act as a deterrent to continued violations of rights by the police. That would thwart the purpose of the Civil Rights Act and weaken our constitutional rights by effectively eliminating the remedy for the violation of those rights.

The decision of the Court of Appeals in the instant case, if allowed to stand, could sound the death knell of punitive damages in 1983 cases and other cases since it would be hard to find more flagrant and wilful and aggravating circumstances than in the instant case. And, if the facts in the instant case will not support punitive damages, what facts will support them?

To prevent the demise of punitive damages as an effective remedy for the enforcement of civil rights and for deterrence of similar violations of civil rights, petitioners pray that this Writ of Certiorari be granted.

Respectfully submitted,

HARVEY MELINGER
134 North LaSalle Street
Suite 2116
Chicago, Illinois 60602
312/346-7920
Counsel for the Petitioners

APPENDIX A

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Nos. 78-2414, 78-2415, 79-1090 and 79-1149
NORB J. KONCZAK and LINDA KONCZAK,
Plaintiffs-Appellants, Cross-Appellees,

v.

ARTHUR T. TYRRELL, Sheriff of McHenry County, ROBERT W. MADSEN, Captain, Sheriff's Police, McHenry County, and LES KOTTKE, Sergeant, Sheriff's Police, McHenry County,
Defendants-Appellees, Cross-Appellants.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 76 C 1792—NICHOLAS J. BUA, *Judge.*

ARGUED JUNE 12, 1979—DECIDED JULY 12, 1979
Before PELL, SPRECHER, and WOOD, *Circuit Judges.*

WOOD, *Circuit Judge.* In 1976 plaintiffs Norb J. and Linda Konczak, husband and wife, filed suit in federal district court under 42 U.S.C. § 1983 against defendants Les Kottke, Robert Madsen and Arthur Tyrrell, all members of the McHenry County Sheriff's Department in Illinois, charging deprivations of due process rights springing from an unlawful arrest.[1] The plaintiffs also

[1] The Civil Rights Act of 1871 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, or any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the

charged the police officers with conducting an unlawful search and seizure, and plaintiff Norb Konczak alleged malicious prosecution and unlawful incarceration.[2] In 1978 after a four-day trial the jury returned a verdict in favor of Norb Konczak and assessed $10,000 in compensatory damages and $21,000 in punitive damages. The jury also found in Linda Konczak's favor and awarded her $2,500 in compensatory and $2,500 in punitive damages. Later, the district court denied a general motion by the defendants for judgment notwithstanding the verdict. The court, however, granted that part of the motion which related to the awards of punitive damages declaring that the "plaintiffs wholly failed to produce any evidence" to support an award of punitive damages. The counsel for the plaintiffs then filed a motion for attorney's fees and costs

[1] (Continued)
jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable tothe party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983.

In order to recover under Section 1983, the plaintiff must establish both deprivation of a right secured by federal law or the Constitution and action by the defendant under the color of state law. *Adickes* v. *Kress & Co.,* 398 U.S. 144 (1970). An individual who is arrested without probable cause may have grounds for an action under Section 1983. See *Butler* v. *Goldblatt Bros., Inc.,* 589 F.2d 323 (7th Cir. 1978); *Banish* v. *Locks,* 414 F.2d 638 (7th Cir. 1969); *Thornton* v. *Buckmann,* 392 F.2d 870 (7th Cir. 1968).

[2] The complaint, as amended, named five other officers as defendants: George Corson, Robert Crabtree, Richard Heisler, Lawrence Maceroux and Robert Sweeney. The district court dismissed Corson and Maceroux from the case prior to trial and the jury found no liability on the parts of Crabtree, Heisler and Sweeney. Those determinations are not questioned in this appeal.

as a "prevailing party" under 42 U.S.C. § 1988, and, in a subsequent brief, requested $13,073.67 in attorney's fees and $1,619.19 in costs. The dictrict court granted counsel $6,573.29 in fees and $1,619.19 in costs.

On appeal the plaintiffs contend that the district court committed error in entering judgment notwithstanding the jury's verdict on the issue of punitive damages because there was ample evidence of willful and wanton misconduct. The plaintiffs also assert that the court erred in not awarding the exact amount of attorney's fees requested or in not holding an evidentiary hearing on the matter. Cross-appealing, the defendants' claim that the district court erred in failing to enter a total judgment n.o.v., asserting there was insufficient evidence to support the jury's verdict. Alternatively, the defendants argue that the plaintiffs are entitled to no more than nominal damages of $1.00 because the plaintiffs failed to prove actual damages. Finally, the defendants assert that either the plaintiffs should receive no attorney's fees because the lawsuit vindicated a private, not a public, interest or the award of attorney's fees should be reduced because the district court judge abused his discretion. We affirm the district court's judgment in all respects. We consider the sufficiency of the evidence issue first so that the case may be placed in a proper perspective.

A motion for judgment notwithstanding the verdict "should be denied where the evidence, along with the inferences to be reasonably drawn therefrom when viewed in the light most favorable to the party opposing such motion, is such that reasonable men in a fair and impartial exercise of their judgment may reach different conclusions." *Booker Clemons* v. *Mitsui O.S.K. Lines, Ltd. and Baba-Daiko Shosen,* K.K., No. 78-1812, slip op. at 4 (7th Cir. April 16, 1979); *Hohmann* v. *Packard Instrument Co.,* 471 F.2d 815, 819 (7th Cir. 1973). Making all reasonable inferences in the light most favorable to the jury's verdict, we believe the evidence at trial established the following facts. The plaintiffs, Norb and Linda

Konczak, are married and reside in McHenry County, Illinois, with five children from Norb's previous marriage, two children from Norb and Linda's marriage and Linda's brother, Larry Gibson. On November 24, 1975, Norb Konczak called the office of Congressman Robert McClory and complained that his former wife had abused the children from his first marriage and that the McHenry County Sheriff's Department had mistreated him and his family. After sending a letter to the Congressman's office detailing the complaints, Norb Konczak received a telephone call on March 25, 1976, from Michael McCarry, a legislative assistant in Washington, D.C. to Congressman McClory. Immediately after that phone conversation, McCorry called the McHenry City Police Department and informed Sergeant Zujewski that he had just talked with Norb Konczak who lived in the McHenry area and that Konczak stated he was going to kill an officer with a 30.06 rifle. Sergeant Zujewski explained that Konczak, living in an unincorporated area of McHenry County, was outside the city's jurisdiction and that he would notify the Sheriff's Department. The Sergant then phoned the Sheriff's office and informed Detective Maceroux that an aide to Congressman McClory called stating that Norb Konczak was "going to shoot a policeman." On the basis of this statement, subsequently verified by a direct telephone call to McCarry, and other unspecified information about Konczak's "character," Sheriff Arthur Tyrrell ordered the arrest of Norb Konczak for "threatening" or assaulting a police officer.

Once the order for his arrest was broadcast by radio dispatch, Sergeant Les Kottke and Deputy Robert Sweeney proceeded to the Konczak home early that afternoon, coaxed Norb outside, and placed him under arrest for assaulting a police officer. Leaving the house, Linda Konczak approached her husband. Upon observing a person in a suit heading toward the back door, Norb Konczak told his wife that "somebody was coming to the back door and to go in the house." When Linda Konczak started to return to the house, she was restrained by Officer Kottke. Norb Konczak was subsequently transported in a squad car to the county police station by Officer Sweeney. Meanwhile, Officer Kottke blocked Linda Konczak's entrance to the house promising her access to her home but only with his accompaniment. She refused. Captain Madsen then arrived at the scene and explained that he wanted consent to search the house for firearms. She again refused. While Linda Konczak was detained outside the house for over two hours, her three youngest children, ages two, five and five, remained unattended in the home. When the mother's two-year-old daughter appeared at a window with red glaze, a lead substance, on her face and the mentally retarded daughter, who was also denied access to the house, could wait no longer to visit the bathroom, Linda consented.

Linda Konczak escorted Captan Madsen to a bedroom, opened a drawer in the room and revealed a loaded .22 caliber Stern Luger.[3] Madsen took the firearm. In fact, her brother, Larry Gibson, owned the pistol, lived in the Konczak home in the bedroom where the gun was located, and possessed an owner's identification card at the time.

Norb Konczak was imprisoned in the county jail until that evening and subsequently was transported to Elgin State Hospital. The petition for hospitalization alleged that he was afflicted with a mental disorder and was likely to physically harm others, evidence by the act of calling his Congressman's office saying that "he was going to kill a policeman." After a lengthy examination by a psychiatrist, Norb Konczak was found needing neither mental treatment nor hospitalization. About 2:30 a.m. on March 26, 1976, he was transported from the hospital back to the county jail. Later in the morning he appeared before a judge and was released on bond.

---

[3] Linda Konczak admitted during the trial that there was also a 30.06 rifle in the house when Captain Madsen searched the home.

Norb Konczak was charged with disorderly conduct for threatening to shoot a police officer in violation of Ill. Rev. Stat. ch. 38, § 26-1(a)(2), and this criminal complaint was later amended to a charge of disorderly conduct under Ill. Rev. Stat. ch. 38, § 26-1(a)(1).[4] He was also charged with the crime of possession of firearm without a firearm owner's identification card in violation of Ill. Rev. Stat. ch. 38, § 83-2(a).[5] Several months after his arrest, another criminal complaint for disorderly conduct was lodged against Norb Konczak under Ill. Rev. Stat. ch. 38, § 26-1(a)(1) for telling his wife at the time of his arrest to "run in the house and get the rifle."[6] Later, a jury ac-

---

[4] Section 26-1(a)(1) provides:

(a) A person commits disorderly conduct when he knowingly:

(1) Does any act in such unreasonable manner as to alarm or disturb another and to provoke breach of the peace.

Before the Illinois Supreme Court declared Section 26-1(a)(2) unconstitutionally overbroad in *People* v. *Klick*, 66 Ill. 2d 269, 362 N.E.2d 329 (1977), the statute also provided that "[a] person commits disorderly conduct when he knowingly: . . . (2) with intent to annoy another makes a telephone call, whether or not a conversation thereby ensues." Ill. Rev. Stat. ch. 38, § 26-1(a)(2).

[5] Section 83-2(a) provides:

No person may acquire or possess any firearm or any firearm ammunition within this State without having in his possession a Firearm Owner's Identification Card previously issued in his name by the Department of Law Enforcement under the provisions of this Act.

[6] Although Norb and Linda Konczak testified that during his arrest the husband told his wife that "somebody was coming to the back door and to go in the house," the police contended that he shouted "run in the house and get the rifle."

quitted Norb Konczak on the charges of disorderly conduct for saying "run in the house and get the rifle" and possession of a firearm without an owner's identification card. The other charge of disorderly conduct for threatening to shoot a police officer was dismissed.

Considering the evidence in the light most favorable to the plaintiffs, we conclude that it was sufficiently probative for jurors to fairly and impartially reach different conclusions on the question of whether Sheriff Tyrrell, Captain Madsen and Sergeant Kottke violated the plaintiffs' constitutional rights. The district court therefore properly denied the general motion for judgment n.o.v.

Turning to the other issues, we consider next the defendant's assertion that the plaintiffs are entitled to no more than nominal damages of $1.00 because the plaintiffs failed to prove actual damages. The jury had awarded Norb and Linda Konczak $10,000 and $2,500, respectively, in compensatory damages. Following *Wood* v. *Strickland*, *408* U.S. 323, 322 (1975), this circuit held that a county official may be liable for damages under Section 1983 only if he "acted with an impermissible motivation or with such intentional or reckless disregard of the plaintiff's clearly established constitutional rights that his action cannot be reasonably characterized as being in good faith." *Fulton Market Cold Storage Co.* v. *P. J. Cullerton*, 582 F.2d 1071, 1080 (7th Cir. 1978). *See also Procunier* v. *Navarette*, 434 U.S. 555 (1978). The defendants do not launch an attack on the jury's verdict armed with the test of *Wood* v. *Strickland*. Rather, the officers charge that under *Carey* v. *Piphus*, 435 U.S. 247 (1978), the Supreme Court requires that actual damages must be proven for every violation of a constitutional right. The defendants misread the case. In *Carey* v. *Piphus* the Supreme Court held that where a plaintiff has proven a deniel of procedural due process without proving any actual injury, he may only recover nominal damages. *Id.* at 266-67. The Court, however, distinguished procedural constitutional violations from substantive ones such as those asserted by the plain-

tiffs here. *Id.* at 264-65. In any event, we believe the plaintiffs presented sufficient evidence of actual damages in this case. The jury could have properly found that the plaintiffs suffered a loss in earnings of $576 and other less quantifiable damages in the form of mental distress, humiliation, loss of reputation, and other general pain and suffering resulting from the arrest, detention, search and seizure, imprisonment, confinement to a mental institution, and prosecution of three criminal complaints. The compensatory awards were supported by the evidence.

Penultimately, we consider the plaintiff's contention that the district court erred in granting the defendant's motion for judgment notwithstanding the verdict on the issue of punitive damages. The jury had awarded Norb and Linda Konczak $21,000 and $2,500, respectively, in punitive damages. This circuit has stated that "[p]rovided certain aggravating circumstances are shown, punitive damages are recoverable under federal law in a § 1983 action." *Spence* v. *Staras,* 507 F.2d 554, 558 (7th Cir. 1974). *See also Morales* v. *Haines,* 486 F.2d 880, 882 (7th Cir. 1973). The Supreme Court recently noted in *Carey* v. *Piphus,* 435 U.S. 247, 257 n.11 (1978), that punitive or exemplary damages may be awarded in appropriate cases under Section 1983 with the specific purpose of deterring or punishing violations of constitutional rights and commented that there the district court specifically found that the defendants "did not act with a malicious intention to deprive [plaintiffs] of their rights or to do them other injury." In assessing punitive damages, many of the courts of appeals also focus on whether the defendant acted with malicious intent. *See Morrow* v. *Igleburger,* 584 F.2d 767, 769 (6th Cir. 1978); *Silver* v. *Cormier,* 529 F.2d 161, 163-64 (10th Cir. 1976); *Caperci* v. *Huntoon,* 397 F.2d 799, 801 (1st Cir.), *cert. denied,* 393 U.S. 940 (1968). *See generally Stengle* v. *Belcher,* 522 F.2d 438, 444 n.4 (6th Cir. 1975), *cert. dismissed,* 429 U.S. 118 (1976); *Mansell* v. *Saunders,* 372 F.2d 573, 576 (5th Cir. 1967); *Basista* v. *Weir,* 340 F.2d 74, 84-88 (3d Cir. 1965).

In the present case the district court declared:

> The court finds that the evidence, viewed in the light most favorable to plaintiffs, with all reasonable inferences drawn in their favor, was such that reasonable men in the fair and impartial exercise of judgment could not have concluded that any of the defendants was guilty of wilful and wanton misconduct toward either plaintiff. Indeed, plaintiffs wholly failed to produce any evidence to support a finding of wilful and wanton misconduct.

We have examined the record and, viewing the evidence and making reasonable inferences in the light most favorable to the plaintiffs, we conclude that there is simply no evidence of aggravating circumstances or of the defendants acting malicious intent upon which the jury could award punitive damages. In fact, the defendants permitted Norb Konczak, at the time of his arrest, to cross the street, borrow a cigarette from his brother-in-law and calm his wife on the porch before he was taken to the police station. Although Linda Konczak was detained, the defendants allowed her to talk to her three children through a window and thus hold them by the window. Norb Konczak conceded that there was no abusive conduct by the police officers. The district court properly granted the motion for judgment n.o.v. on the issue of punitive damages.

Last, we turn to the assertions surrounding the district court's award of fees under the Civil Rights Attorney's Fees Award Act of 1976, 42 U.S.C. § 1988.[7] The plaintiffs' attorney filed a post trial motion as attorney for the "prevailing party" under Section 1988 requesting $24,150.50 in attorney's fees and $2,333.25 in costs. After the defen-

---

[7] Section 1988 provides in pertinent part:

> In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title . . ., the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

dants filed a lengthly brief opposing the motion, plaintiffs' counsel submitted an extensive brief and, eliminating "questionable time," reduced his request to $13,073.67 in attorney's fees and $1,619.19 in costs. Noting that both sides had briefed the motion, the district court reviewed the plaintiffs' schedule of charges, found that many of the charges were overstated and granted counsel $6,573.29 in fees and all of the requested costs. The plaintiffs argue that the court erred in not granting plaintiffs' counsel the attorney's fees requested or in reducing the requested amount of fees without first conducting a hearing. The defendants do not challenge the finding that the plaintiffs were the "prevailing party," but they do claim that either the plaintiffs should receive no attorney's fees because the lawsuit vindicated a private, not a public, interest or that the district court judge abused his discretion in not further reducing the award of attorney's fees. We do not find the arguments of either side convincing.

Considering the depth of the briefing, a hearing on the attorney's fees is unnecessary. Also, the results obtained from a decision correcting violations of civil rights is merely one of factors considered by district courts in arriving at reasonable fee awards. *Waters* v. *Wisconsin Steel Works of International Harvester Co.*, 502 F.2d 1309, 1322 (7th Cir. 1974), *cert. denied*, 425 U.S. 997 (1976); *Johnson* v. *Georgia Highway Express, Inc.*, 488 F.2d 714, 718 (5th Cir. 1974). *See also Perez* v. *University of Puerto Rico*, No. 79-1541, slip op. at 2-3 (1st Cir. June 19, 1979). Disposing of the remaining arguments, we note that the Congress plainly provided in the language of Section 1988 and this court clearly stated in *Dawson* v. *Pastrick*, No. 78-1139, slip op. at 16 (7th Cir. May 31, 1979), that whether to award attorney's fees is within the sound discretion of the district court. We stated, however, that the trial court's discretion is narrow because "a prevailing plaintiff should receive fees almost as a matter of course." *Id.; Davis* v. *Murphy*, 587 F.2d 362, 364 (7th Cir. 1978). *See also Newman* v. *Piggie Park Enterprises, Inc.*, 390 U.S. 400, 402

(1968); S.Rep.No. 94-1011, 94th Cong., 2d Sess. 4 *reprinted in* [1976] U.S. Code Cong. & Ad. News 5912. In the present case the defendants admit *sub silentio* that the plaintiffs prevailed and an award of attorney's fees should follow. The reasonableness of the award, furthermore, rests within the sound discretion of the district court. *Waters* v. *Wisconsin Steel Works of International Harvester Co.*, 502 F.2d at 1322; *Johnson* v. *Georgia Highway Express, Inc.*, 488 F.2d at 717. There was no abuse of discretion here.

For the above reasons the judgment of the district court is affirmed.

AFFIRMED.

A true Copy:

Teste:

.....

Clerk of the United States Court of Appeals for the Seventh Circuit

APPENDIX B

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
August 20, 1979

Before

Hon. WILBUR F. PELL, JR., Circuit Judge
Hon. ROBERT A. SPRECHER, Circuit Judge
Hon. HARLINGTON WOOD, JR., Circuit Judge

No. 78-2414
NORB J. KONCZAK and LINDA KONCZAK,

Plaintiffs-Appellants,

vs.

ARTHUR T. TYRRELL, Sheriff of McHenry County, ROBERT W. MADSEN, Captain, Sheriff's Police, McHenry County, and LES KOTTKE, Sergeant, Sheriff's Police, McHenry County,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 76 C 1792
NICHOLAS J. BUA, *Judge*.

ORDER

On consideration of the petition for rehearing and suggestion for rehearing *in banc* filed in the above-entitled cause by counsel for the plaintiffs-appellants, no judge in active service has requested a vote thereon, and all of the judges on the original panel have voted to deny a rehearing. Accordingly,

IT IS ORDERED that the aforesaid petition for rehearing be, and the same is hereby DENIED.

APPENDIX C

PETITION FOR HOSPITALIZATION
STATE OF ILLINOIS
CIRCUIT COURT OF THE 19th JUDICIAL CIRCUIT
McHenry COUNTY

In the matter of

Asserted to be in need of mental treatment) No.

Asserted to be mentally retarded)

Deputy Robert Sweeney, a reputable citizen of Illinois, states:

1. Norbert J. Konczak resides or is found in this county at 4502 N. Hickoryway Drv. McHenry, Illinois and
   [x] is in need of mental treatment as defined in Section 1-11 of the Mental Health Code" (see footnote)
   [] is mentally retarded as defined in Section 1-12 of the Mental Health Code (see footnote)
2. He requires assignment to a mental hospital.
3a. The spouse or nearest known relative of the person is Unknown

.....

(address)

3b. The name of the spouse or nearest relative cannot be learned after a diligent inquiry.

.....

(Name) (relationship) (address)
has custody and control of the person.

5. List specific acts by the person which show the person is likely to physically harm himself or herself or other unless immediately hospitalized. For each such act, you must describe (attach separate sheet, if necessary)
   A. The act itself. He did call Rep. Robert McClory's office in Washington, D.C. and state that he was going to kill a policeman.
   B. The state and place of this act.
   25 March 1976 in McHenry County Illinois
   C. The witness(es) to that act and their address(es).
   Deputy Robert Sweeney
   D. List the names and address(es) of your source(s) of information about that act.
   Rep. Robert McClory — Washington D.C.

Ill. Rev. Stat. 1979, Ch. 91½ §1-11. "Person in Need of Mental Treatment," when used in this Act, means any person afflicted with a mental disorder, not including a person who is mentally retarded, as defined in this Act, if that person, as a result of such mental disorder, is reasonable expected at the time the determination is being made or within a reasonable time thereafter to intentionally or unintentionally physically injure himself or other persons, or is unable to care for himself so as to guard himself from physical injury or to provide for his own physical needs. This term does not include a person whose mental processes have merely been weakend or impaired by reason of advanced years.

Ill. Rev. Stat. 1972, Ch. 91½ §1-12. "Mentally Retarded and Mental Retardation", refer to subaverage general intellectual functioning generally originating during the

developmental period and is associated with impairment in adaptive behavior. Impaired adaptive behavior may be reflected in delay maturation or reduced learning ability or inadequate social adjustment.

I believe that the ..... that he is likely to physically harm himself or others if not immediately hospitalized. The condition of a one is:

(physician) (psychologist)

[] attached

[x] not attached because no Physician was immediately available who could examine the person.

I request the court, pursuant to statute, to set this petition for hearing, to direct that a writ be issued and that reasonable notice of the time and place of hearing be served, and to adjudicate the person's need for hospitalization.

I state, under penalty of perjury, that I have read this petition and that it is true to the best of my knowledge and belief.

/s/ Robert Sweeney	None — Police Officer	30
(Signature of petitioner)	(relationship)	(age)
2200 N. Seminary Ave.	Woodstock, Illinois	
(street)	(city) (state)	

APPENDIX D

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 19th
JUDICIAL CIRCUIT
McHENRY COUNTY

No. 76 CM-691
THE PEOPLE OF THE STATE OF ILLINOIS

vs.

NORB J. KONCZAK
4502 Hickoryway
McHenry, Illinois

Defendant

CRIMINAL COMPLAINT

(Filed Mar 26 1976)

Complainant, Deptuy Sheriff Robert Sweeney, on oath charges:

That on March 25, 1976, in McHenry County, Norb J. Konczak committed the offense of Disorderly Conduct in that he, Norb J. Konczak, did knowingly transmit to the office of Congressman Robert McClory that he was going to kill, by the use of a firearm, a police officer, and did act in such an unreasonable manner to provoke a breach

of the peace in violation of Paragraph 26-1a2, Chapter 38, Illinois Revised Statutes.

Bond set at $1,000.00
Cont'd to May 4, 1976
At 9:30 A.M.
Central Division Court
2200 N. Seminary Ave.
Woodstock, Ill.

/s/ Robert Sweeney
(Complainant)
Deputy Sheriff for McHenry County
Sworn To before me
March 25th, 1976
/s/ Allen Fain
Notary

Rights Explained
By J. Herriston
Date 3-26-76

APPENDIX E

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 19th
JUDICIAL CIRCUIT
McHENRY COUNTY

No. 76 CM-691
THE PEOPLE OF THE STATE OF ILLINOIS
vs.
NORB J. KONCZAK
4502 Hickoryway
McHenry, Illinois
Defendant

CRIMINAL COMPLAINT

Complainant, Deputy Sheriff Robert Sweeney, on oath charges:

That on March 25, 1976, in McHenry County, in the State of Illinois, Norb J. Konczak committed the offense of Disorderly Conduct in that while speaking to Michael McCary, did threaten to kill a McHenry County police officer by the use of a firearm and did so in such an unreasonable manner as to alarm and disturb Michael McCary and thereby provoke a breach of the peace in violation of Section 26-1(a)(1), Chapter 38, Illinois Revised Statutes.

/s/ Deputy Robert Sweeney #119
(Complainant)
Sworn To before me
June 30, 1976
/s/ Richard A. Herrmann
Judge

APPENDIX F

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 19th
JUDICIAL CIRCUIT
McHENRY COUNTY

No. 76 CM-692
THE PEOPLE OF THE STATE OF ILLINOIS
vs.
NORB J. KONCZAK
4502 Hickoryway
McHenry, Illinois
Defendant

CRIMINAL COMPLAINT
(Filed Mar 26 1976)

Complainant, Robert H. Sweeney, on oath charges:

That on March 25th, 1976, in McHenry County, Norb J. Konczak committed the offense of Possession of firearm without requisite firearm owners identification card in that he, Norb J. Konczak did knowingly possess a firearm, firearm ammunition, namely a 22 caliber pistol Ruger company blue steel six shot, plus 5 rounds of 22 caliber ammunition, within this state, without having in his possession a firearms owners identification card previously issued in his name by the department of public

safety under the provisions of the firearm and ammunition act in violation of Paragraph 25-2, Chapter 38, Illinois Revised Statutes.

Bond set at $1500.00
Cont'd to May 4, 1976
at 9:30 A.M.
Central Division Court
200 N. Seminary Ave.
Woodstock, Ill.
Rights Explained
By J. Herriman
Date 3-26-76

/s/ Robert Sweeney
(Complainant)
Sworn To before me
March 25th, 1976
/s/ Allen Fain
Notary

APPENDIX G

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 19th
JUDICIAL CIRCUIT
McHENRY COUNTY

No. 76 CM-1772
THE PEOPLE OF THE STATE OF ILLINOIS

vs.

NORB J. KONCZAK
4502 Hickoryway
McHenry, Illinois

Defendant

CRIMINAL COMPLAINT

Complainant, Sargeant Les Kottke, McHenry County Sheriffs' Police, on oath charges: that on March 25, 1976, in McHenry County, did knowingly shout to his wife to run into the house and get the rifle in such a unreasonable manner as to alarm and disturb Sgt. Les Kottke and thereby provoke a breach of the peace.

July 28, 1976

Illegible
Judge